

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

August 28, 2002

IN RE:

JOINT APPLICATION OF ACSI LOCAL SWITCHED
SERVICES, INC., d/b/a E.SPIRE AND AMERICAN
COMMUNICATION SERVICES OF CHATTANOOGA,
INC., d/b/a E.SPIRE AND XSPEDIUS MANAGEMENT CO.
SWITCHED SERVICES, LLC, AND XSPEDIUS
MANAGEMENT CO. OF CHATTANOOGA, LLC FOR
EXPEDITED APPROVAL OF (i) THE TRANSFER OF
SUBSTANTIALLY ALL OF THE ASSETS, INCLUDING
THE CUSTOMER CONTRACTS, OF THE E.SPIRE
OPERATING ENTITIES; (ii) THE TRANSFER OF THE
E.SPIRE OPERATING ENTITIES' STATE
AUTHORIZATIONS TO THE XSPEDIUS OPERATING
ENTITIES; AND (iii) THE DISCONTINUANCE OF
TELECOMMUNICATIONS SERVICES IN TENNESSEE
BY THE E.SPIRE OPERATING ENTITIES

DOCKET NO.
02-00714

ORDER APPROVING TRANSFER OF AUTHORITY
AND CUSTOMER NOTICE LETTER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on July 23, 2002 for consideration of the *Application and Request for Expedited Treatment* (the "Application") filed by American Communication Services of Chattanooga, Inc. ("ACSI of Chattanooga") and ACSI Local Switched Services, Inc. ("ACSI Local") (the "e.spire Operating Entities"), and Xspedius Management Co. of Chattanooga, LLC ("Xspedius of Chattanooga") and Xspedius Management Co. Switched Services, LLC ("Xspedius

Switched”) (the “Xspedius Operating Entities”) (collectively, the “Applicants”). The *Application* was considered pursuant to the provisions of Tenn. Code Ann. § 65-4-113, which requires Authority approval a transfer of authority to provide utility services, and Authority Rule 1220-4-2-.56(2)(d)(2), which provides for the transfer of customers from one telecommunications service provider to another provider through a customer notice letter approved by the Authority.

Requirement of and Standards for Authority Approval for Transfer of Authority

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

Approval of Customer Notice Letter Pursuant to Authority Rule 1220-4-2-.56(2)(d)(2)

Authority Rule 1220-4-2-.56(2)(d)(2) provides as follows:

(d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria

are met:

...

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

The Application

In the *Application*, which was filed on June 21, 2002, the Applicants request approval of a transaction arising out of the e.spire Operating Entities Chapter 11 bankruptcy proceeding that will enable the e.spire Operating Entities to transfer substantially all of their assets, including their customer base, to the Xspedius Operating Entities, and to transfer the current customers of ACSI Chattanooga and ASCI Local to Xspedius of Chattanooga and Xspedius Switched, respectively, or to another carrier of their choice, without interruption of service. This transaction was approved on June 5, 2002 by the United States Bankruptcy Court for Delaware.

According to the *Application*, Xspedius of Chattanooga and Xspedius Switched are Delaware limited liability companies whose principal place of business is located in O'Fallon, Missouri. The parent company of the Xspedius Operating Entities is Xspedius Management Co., LLC. ACSI of Chattanooga and ACSI Local are Delaware corporations with their principal place of business located in Herndon, Virginia. The parent company of

the e.spire Operating Entities is e.spire Communications, Inc. The e.spire Operating Companies are authorized to provide dedicated service and switched local exchange and interexchange services in Tennessee.

According to the *Application*, following the transaction, the Xspedius Operating Entities will provide the same local, long distance, and dedicated telecommunications services to the e.spire Operating Entities' former customers in Tennessee. The *Application* states that to ensure a seamless transition and avoid customer confusion or inconvenience, the Applicants have provided written notice to the affected customers of the e.spire Operating Entities in Tennessee on June 7, 2002. A copy of the notification letter is attached to the *Application*.

The *Application* states that the Xspedius Operating Entities will continue the rates and service arrangements previously offered by the e.spire Operating Entities for the customers of the e.spire Operating Entities they are acquiring. As a result, the *Application* states, the proposed transfer of customers will be virtually transparent to the e.spire Operating Entities' customers in Tennessee in terms of rates, terms, and conditions of service.

The *Application* further states that upon completion of the transaction, the e.spire Operating Entities will no longer be providing local exchange, interexchange, and dedicated services in Tennessee. Accordingly, ACSI of Chattanooga and ACSI Local request Authority approval to discontinue service upon completing the transfer of their customers to Xspedius of Chattanooga and Xspedius Switched, and that they be permitted to withdraw their telecommunications authorizations and tariffs effective upon the transfer of their customers to the Xspedius Operating Entities.

Public Interest Considerations

According to the *Application*, the proposed transaction serves the public interest because it will eliminate the threat of disruption of service to existing customers of the e.spire Operating Entities, will allow those customers to move to their new long-term provider, and will increase competition in the Tennessee telecommunications market by strengthening the Xspedius Operating Entities' position as effective and multifaceted telecommunications carriers.

Findings

The Authority considered this matter at the July 23, 2002 Authority Conference. Based upon careful consideration of the *Application*, the Authority finds and concludes as follows:

1. The Authority has jurisdiction over the subject matter of this *Application* pursuant to Tenn. Code Ann. § 65-4-113.
2. American Communication Services of Chattanooga, Inc. and ACSI Local Switched Services, Inc. have been granted authority to provide telecommunication services in Tennessee.
3. Substantially all of the assets, including the customer base, of American Communication Services of Chattanooga, Inc. and ACSI Local Switched Services, Inc. will be transferred to Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, resulting in a transfer of the authority granted American Communication Services of Chattanooga, Inc. and ACSI Local Switched Services, Inc. to provide utility services.
4. Approval of the transfer of authority is appropriate pursuant to the

provisions of Tenn. Code Ann. § 65-4-113.

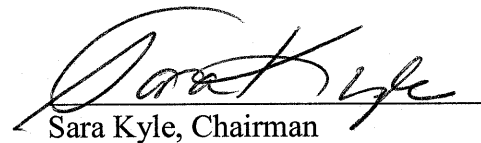
5. The Applicants listed herein have submitted a customer notice letter which fully complies with the requirements of Authority Rule 1220-4-2-.56(2)(d)(2).

IT IS THEREFORE ORDERED THAT:

1. The *Application* of American Communication Services of Chattanooga, Inc., ACSI Local Switched Services, Inc., Xspedius Management Co. of Chattanooga, LLC, and Xspedius Management Co. Switched Services, LLC for approval of the transfer of authority described herein is approved;

2. The customer notice letter filed with the *Application* is approved; and

3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Ron Jones, Director